

# NITY\_PARTICIPATION\_IN\_ASSISTANCE\_OF\_CHILDREN\_CRIMINAL\_ACTORS.pdf

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## COMMUNITY PARTICIPATION IN ASSISTANCE OF CHILDREN CRIMINAL ACTORS

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### Abstract

In order to handle children in conflict with the law, the public must be directly involved in enforcing criminal law, so that they can judge whether the criminal case settlement process can bring justice or not and participate through an institution that oversees the implementation of the criminal justice system.

The purpose of this study was to determine and analyze the extent of community participation in assisting children who commit crimes so that it can help reduce trauma to create a good future for children.

This research is used to find a model of community participation in mentoring children who commit crimes based on primary data and secondary data

This community participation is a new breakthrough in the model of assisting children in conflict with the law, in order to reduce the trauma caused by the imposition of criminal sanctions. Children get a better life after serving a criminal period so that they can manifest their self-confidence to return to society

Keyword: children, criminal law, community participation

### 1. Introduction

Children Dealing with the Law Based on Article 1 paragraph (2) of Law no. 11 of 2012 concerning the Criminal Justice System for Children, what is meant by children in conflict with the law, is as follows: "Children who are in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts

The Social Advisor is one of the parties involved during the judicial process for Children in Conflict with the Law from the moment the child is arrested until the child completes his sentence. This makes the Community Counselor have an important role in the process of mentoring children, which is divided into 3 stages, namely the pre-adjudication stage, namely the investigation, the adjudication stage, namely assistance in the trial and the post-adjudication stage. namely supervision

and guidance. The existence of children in conflict with the law needs attention and protection, because in essence children cannot protect themselves from various kinds of actions that cause mental, physical, social harm in various fields of life. Children must get protection by individuals, groups, social organizations and the government in particular, most importantly by Community Guides who have an important role in the welfare of the child and their future from various errors in the application of the law to children who face problems with the law, especially in the process of solving cases child criminal. For that we must pay attention and serve them, because they are very sensitive to various threats of mental, physical and social disorders. Children who are faced with the law often cannot protect themselves because of the circumstances. In the case of children in Indonesia, Community Guidance assistance has not been fully implemented in accordance with Article 23 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which explains that children must be given legal assistance and be accompanied by a social advisor or other assistance in accordance with the provisions of laws and regulations and Article 64 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System which determines that Community Research, mentoring, mentoring, and supervision of children is carried out by Community Advisors.

Community Guidance Assistance is carried out when the child suspect undergoes an examination by the investigator (making the BAP of the child), follows the diversion process that has been determined by the Police by providing assistance to the child during the diversion process, signing the draft file of the diversion report, as well as examination in the trial if indeed the legal process must reach the Court stage. Furthermore, the guidance carried out by the Community Advisor is providing social guidance, strengthening positive personalities and understanding the child suspect during the legal process. The supervision carried out by the Community Advisor is to oversee whether the diversion agreement has been fulfilled or otherwise. If the diversion agreement has been fulfilled, the Community Advisor will make a report aimed at the party conducting the diversion. In the event that the diversion agreement is not implemented within the stipulated time, the Community Advisor will immediately report it to the responsible official as referred to in Article 14 paragraph (1) of the Child SPP

## 2. <sup>2</sup> Research Methods

The method used in this research is development research (RnD). The data collection technique used was Data and Source Technique Triangulation, then analyzed using the Interactive analysis model. The indicator of the success of the implementation of this research is the Strengthening of the Child Assistance Model by Community Advisors by involving community participation, to participate actively in solving legal problems, especially children as actors and their implications for the field of Social Humanities.

## <sup>8</sup> 3. Result and Discussion

### 3.1 Child protection

Legal protection for children has a fairly wide spectrum. In various documents and international meetings it is seen that the <sup>3</sup> need for legal protection for children can include various aspects, namely: protection of human rights and freedom of children, protection of children in judicial processes, protection of children's welfare (in the family environment, education and social environment), protection of children in matters of detention and deprivation of freedom, protection of children from all forms of exploitation (slavery, child trafficking, prostitution, pornography, trafficking / drug abuse, exploiting children in committing crimes and so on), protection of street children, child protection from the consequences of war / armed conflict, protection of children against acts of violence.

<sup>12</sup> The rights of children in Law number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection are regulated in Article 6 which states: "Every child has the right to worship according to his religion, think, and express himself according to his level. intelligence and age under the guidance of parents or guardians. "Perpetrators of child crimes who are awaiting the judicial process get additional problems in terms of morally and psychologically. However, an important problem to be studied is how the criminal justice process must be faced and how the application of legal protection is carried out in the process of examining criminal cases for children who are still vulnerable to their physical and mental abilities.

Various factors make it possible for children to engage in delinquency and criminal activities that can put them in conflict with the law and the criminal

justice system. Therefore, the laws and regulations in Indonesia regarding children as victims of crime are regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Protection of children as perpetrators of criminal acts is now regulated in Law Number 11 of 2012 concerning the Criminal Justice System for children (UUSPPA), based on the provisions of Article 4 paragraph 2 points (1 and 2) the basis for handling children in legal conflict (ABH) from the initial process of investigation until serving a sentence.

The Juvenile Criminal Justice System must prioritize the Restorative Justice approach. The Juvenile Criminal Justice System includes: a. Investigation and prosecution of juvenile crimes are carried out in accordance with the provisions of laws and regulations, unless otherwise provided in this Law; b. Trial of children conducted by the court within the general court; and c. Development, guidance, supervision and / or assistance during the process of implementing a crime or action and after undergoing a crime or action.

### 3.2 Overview of Community Advisors

Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System states that Community Advisors are functional law enforcement officials who carry out Community Research, guidance, supervision and assistance to children, both inside and outside the criminal justice process.<sup>1</sup>

According to Sumarsono, the Social Advisor, who was previously known as a social justice worker, is an employee whose job is to present data about the client, family and community, background and reasons why a child violates the law. Information / data, among others, were obtained through social worker science approaches / methods.<sup>2</sup>

Menurut Marianti Soewandi, Pembimbing Kemasyarakatan dapat dikatakan sebagai pekerja sosial dalam bidang kehakiman. Pembimbing Kemasyarakatan yang disebut *Probation, Parole, dan After Care Officer* harus

<sup>1</sup>RI Law Number 11 of 2012

<sup>2</sup> Sumarsono. Methods and Techniques for Making Litigation for Trial of Child Cases at the Correctional Assistance Citizens Development Court, Jakarta: BPSDM Ministry of Law and Human Rights, 2011. PAGE 5.

The 3<sup>rd</sup> International Conference on Technology, Education, and Social Science 2020 (The 3<sup>rd</sup> ICTESS 2020)

memiliki disiplin ilmu tentang pekerjaan sosial, di samping disiplin ilmu lainnya dalam usaha pelaksanaan bimbingan klien secara terpadu.<sup>3</sup>

Article 65 of the Republic of Indonesia Law Number 11 of 2012 concerning the Criminal Justice System for Children, also states that the Social Advisor has the duty to:

- a. Making reports on the results of Community Research for diversion purposes, providing assistance, guidance and supervision of children during the diversion process and implementing the agreement, including reporting it to the court if diversion is not implemented.
- b. Making reports on the results of community research for the purposes of investigation, prosecution and trial in juvenile cases, both inside and outside the court, including in LPAS and LPKA.
- c. Determine child care programs at LPAS and child development programs in LPKA together with other correctional officers.
- d. Assisting, guiding, and supervising children who, based on a court decision, are criminalized or subject to action.
- e. Provide assistance, guidance, and supervision to children who receive assimilation, parole, pre-release leave, and parole.

In the Diversion process, BAPAS has a strategic role, Assisting, guiding, and supervising children during the Diversion process until the Diversion agreement has been reached and has been ruled by the court, then the PK's task is to provide assistance, guidance and supervision to children, if The Diversion agreement is not implemented within the stipulated time, so the PK must immediately report it to the responsible official. In addition, the Bapas provide assistance and supervision to the process of detention of children. Temporary places for children who are detained during the trial process are the Temporary Child Placement Institutions (LPAS).

Table I  
Number of cases of children in conflict with the law  
handled by BAPAS Surakarta in 2019

<sup>3</sup> Marianti Soewandi. Book of Correctional Science Academy Lecture Materials, Client Guidance and Counseling. Jakarta: Secretariat General of the Ministry of Justice and Human Rights of the Republic of Indonesia. 2003, p. 7.

No.	Information	Statement of BAPAS	Recommendations on the Result of the Court's	Decision in Process	
1.	Diversion	111	92	33	
2.	Punishment				
	a. condision punishment	29	8		
	b. imprisonment	22	40		
3.	sanctions action				
	a. Child Returns to Parents	7	8		
	b. Organizing Institution Social welfare	25	13		
	c. Diklat	-	-		
	Total	194	161		33
			194		

Source: BAPAS Surakarta Social Research Results 2019

Tabel 2

SMS REPORT GATE AWAY  
DEPKUMHAM CENTRAL JAVA IN 2020

NO	PERIOD	CHILD CLIENT		TOTAL	LITMAS	TOTAL
		BKAL	BKAP		LITA	
1	January	19	0	19	10	76
2	February	29	0	29	10	86
23	March	21	0	21	12	114
4	April	7	0	7	8	98
5	May	77	0	77	55	95
6	June	71	0	71	57	103
7	July	85	1	86	64	106
8	August	87	1	88	64	77

Data Lap GATEAWAY depkumham SMS

Information :

BKAL: Boys Client Guidance

BKAP: Girl Client Assistance

LITA: Children's Litmas

### 3.3 Implementation of Diversion in the Community

In classical theory, juvenile delinquency is discussed as a result of different ways of achieving success. Non delinquent children will obey the rules or laws that apply in achieving success, while delinquent children are just the opposite.<sup>4</sup> Meanwhile, in neo-classical theory, children are influenced by the environment and other individuals in carrying out certain actions.<sup>5</sup> What needs to be understood is that the delinquency committed by children is motivated by various factors. Psychological theory uses the assumption that juvenile delinquency can occur as a result of psychological disorders that affect children from an early age. In sociological theory, delinquent behavior is strongly influenced by the child's environment. On the other hand, some academics also assess delinquent behavior due to a condition of alienation, namely a mental condition in which a person feels excluded or isolated from his environment, from himself, and important people around him, where the person feels that he has lost the ability to adapt, even refusing to follow social rules. This condition creates feelings of loneliness, fear, and exclusion.<sup>6</sup>

Disorganization or social disorder in the surrounding environment will maintain the social order, including existing social control. In social control theory, delinquent behavior is assumed to have similar motives with other criminal behavior. This theory seeks to explain how society plays a role in monitoring every criminal act, one of which is by arguing that every delinquent act is strongly influenced by family, friendship and social relations. Adequate understanding in seeing cases of delinquency committed by a child will have an impact on the spirit of restorative justice as the goal of diversion. reintegration stage is an important stage both as a victim and as a perpetrator. Often the perpetrators did not get the benefits of diversion as expected. For example,

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<sup>2</sup> <sup>4</sup> M.R. Gottfredson dan Hirschi, , 2016, A General Theory of Crime, 1990, dalam Kristin C. Thompson, dkk., *Juvenile Delinquency and Disability: Advancing Responsible Adolescent Development*, (Arizona:Springer Nature), hal. 42

<sup>5</sup> Lihat GK Vold & TJ Bernard, 1986, *Theoretical Criminology*, (Oxford: University Press)

<sup>6</sup> Raymond L. Calabresedan Jane Adams, *Alienation: A Cause of Juvenile Delinquency*, Adolescence, Vol. XXV No. 98, (San Diego:Libra Publisher, 1990), hal 1-2, diakses melalui <https://search.proquest.com/docview/195922400?ac->



experienced by many victims of sexual violence who were not accepted back into learning by the school.

This not only hampers children's rights to access to education but puts them back into victims. Many schools still have policies so that students who become pregnant during the study period must resign themselves. The families of victims generally do not know that diversion is a legal solution. In the understanding of the victim's family, imprisonment is a fair legal settlement. In handling cases, an understanding of the coverage of victims is also important, namely as direct victims, but there are also families who have become indirect victims. direct victims. In this case, the participation of ABH victims is often not optimal because victims do not directly become representatives in the diversion process, even so, do ABH victims feel truly represented? Of course, equal opportunities must also be given to the perpetrators. One of the biggest challenges is when people often stigmatize and label them. Lack of understanding in society in seeing the factors that cause a child to commit a crime is one of the obstacles to this reintegration process. The success of the reintegration process for both the perpetrator and the child is a society that has good social energy, which comes from solidarity, has social awareness and responsibility.

The social institution in this case is the community and NGOs that jointly supervise and handle at a practical level. Communities through various community organizations / NGOs need to jointly take various concrete actions, both prevention and handling, namely<sup>7</sup> :

1. The community plays an active role in participating in various outreach on good ways of life to prevent widespread crime. Being active as a participant in extension is already a form of community concern and a form of participation.
2. Assisting the relevant officials by providing information about the actual existence of the problem, so that with this information the case can be quickly handled.

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<sup>7</sup> Maria Sri Iswari JUSTICE RESTORATIVE JUSTICE; HANDLING OF CHILDREN CONCERNING THE LAW (ABH) <sup>20</sup> SOCIAL WELFARE PRESPECTIVE, Volume 1 Number 2, October 2020 SOCIAL KHIDMAT, [Journal of Social Work and Social Service e-ISSN: 2721-6918](#)

3. For people who already understand well about the problems of children in conflict with the law, help inform other communities.
4. The community can provide examples of behavior in accordance with the norms that exist in society in general.
5. The stigma in the community that describes former prison children as negative, has its correct understanding straightened out by the community who already understands that children are victims who need guidance.
6. Besides that, the most basic community assistance is that each family exercises strict control for their children so that they do not fall into violations of the law.

If all these key elements are fulfilled, then the feeling of shame, neglect and pessimism about the environment felt by the victim / perpetrator and family can be reduced.

#### **4. Conclusions and suggestions**

The role of the Community Guidance in the diversion process against children who commit criminal acts, namely; first, as a facilitator, second, as an information gatherer, third, as a social researcher, fourth, as a companion and mentor and fifth, as a research report

The community plays an active role in participating in various education on good ways of life to prevent widespread crime. Being active as a participant in counseling is already a form of community concern and a form of participation. Community participation in assisting children who commit crimes is to reduce the sense of trauma received by children who are faced with the law.

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Legislation

UU No. 11 tahun 2012 Regarding the juvenile criminal justice system

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